

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**UNITED STATES OF AMERICA**

**-vs-**

**Case No. 6:04-cr-69-Orl-31KRS**

**TORREY WILLIAMS**

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**SENTENCING MEMORANDUM OPINION**

On December 7, 2003, Torrey Williams was caught in a sting operation selling 12.3 grams of crack cocaine to an undercover law enforcement officer for a total of \$500.00.<sup>1</sup> Based upon prior drug-related offenses, Defendant scores as a career criminal under U.S.S.G. 4B1.1, resulting in a guideline calculation of 31-VI.<sup>2</sup> Thus, the government seeks to impose a sentence of 188-235 months.<sup>3</sup>

Defendant is a 24-year-old unemployed African-American male with a 10th grade education. He grew up in a stable, but poor, two-parent family and has been in trouble with

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<sup>1</sup>Two transactions were involved. In the first, Defendant was merely the go-between involving the sale of 10.2 grams by an unidentified black male. Thereafter, Defendant sold the agent 2.1 grams of crack for \$100.

<sup>2</sup>But for his career criminal status, he would score at a Level 23.

<sup>3</sup>Although this Court has previously found the Federal Sentencing Guidelines to be unconstitutional, the 11th Circuit Court of Appeals has recently instructed the District Courts to apply the guidelines until the Supreme Court resolves the issue. *U.S. v. Reese*, 382 F.3d 1308, 1312 (11th Cir. 2004).

authority since age eleven. Since age 18, he has been convicted of two prior drug-related felonies (PSR, ¶ 38, 41), both involving relatively minor amounts of crack cocaine.<sup>4</sup>

Defendant has metastatic medullary thyroid cancer, which required a total thyroidectomy, as well as neck dissection. His prognosis is uncertain; however his doctor does note that this form of cancer portends a poorer prognosis than some of the other forms of thyroid cancer.<sup>5</sup> Indeed, the cancer appears to have metastasized into his lungs. Accordingly, Defendant will require adjunctive therapy (radiation and chemotherapy) as well as possible additional surgery in the future.

As a result of this medical condition, Defendant moves for a downward departure under U.S.S.G. 5H1.4. That section provides that “. . . an extraordinary physical impairment may be a reason to depart downward; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.” Federal courts have invoked this provision to warrant a downward departure. *See, e.g., United States v. Rioux*, 97 F.3d 648 (2nd Cir. 1996); *United States v. Greenwood*, 928 F.2d 645 (4th Cir. 1991).

This Court is not aware of any 11th Circuit case law directly on point. However the “guideline”<sup>6</sup> itself indicates that departure for medical reasons is appropriate in only

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<sup>4</sup> He served a total of 18 months in state custody for these two offenses.

<sup>5</sup>Based upon recent publicity concerning our Chief Justice’s thyroid cancer, the three-year survival rate for this type of cancer is 20%.

<sup>6</sup>Use of the term “guideline” is a misnomer. Since the Court has virtually no discretion but to sentence Defendant within a narrow range (188-235 months) of the statutory penalty – 5 to 40 years, these pronouncements more realistically connote sentencing mandates or directives from which the Court cannot “depart” absent compelling circumstances.

“extraordinary circumstances.” See *U.S. v. Smith*, 289 F.3d 696, 713-14 (11th Cir. 2002) (“While the Guidelines ‘do not categorically prohibit a judge from departing on the basis of offender-related characteristics,’ we have held that the policy statements of U.S.S.G. §§ 5H1.1-6 ‘prohibit[] departures from the applicable sentence range in all but extraordinary cases. . . .’”); *U.S. v. Paradies*, 14 F. Supp. 2d 1315, 1320 (N.D. Ga. 1998) (“Only in extraordinary circumstances may these factors warrant a downward departure from the Guidelines . . . . [A] downward departure based on poor physical condition may be appropriate only when a defendant has ‘an extraordinary physical impairment.’”). Thus, departures on this ground are not prohibited, but rarely warranted. *United States v. Mogel*, 956 F.2d 1555 (11th Cir. 1992).

Therefore, the question becomes, is this an “extraordinary circumstance”? Many people sentenced by this Court are incarcerated with physical or medical disabilities, and the Court has always been assured that the Bureau of Prisons will provide all reasonable and necessary medical care to its inmates. Indeed, it may well be that Defendant would receive better health care as a ward of the federal government than he would as a poor, uneducated and unemployed citizen of this state.

A guideline sentence in this case starkly illustrates the problem of attempting to fit the human experience into a discrete mathematical matrix.<sup>7</sup> It just can’t be done, and this Court

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<sup>7</sup>A sentence of 188 months would, in all likelihood, mean that Defendant will be imprisoned for the rest of his natural life; in essence, a life sentence for selling \$500 worth of crack cocaine in a sting operation. In this Court’s opinion, the severity of a sentence such as this should be reserved for drug kingpins, not low-level dealers such as Torrey Williams. However, in the hundreds of drug defendants this Court has seen over the past 3 years, few have been at high levels of the drug distribution chain. And, those that are, are usually in a position to offer the government substantial assistance and thereby receive a substantially reduced sentence under § 5K1.1.

cannot in good conscience do it, because it offends the Court's concept of justice.<sup>8</sup> And the Court will not impose a guideline sentence here because, given the severe form of cancer with which Defendant is stricken and the poor prognosis for this form of cancer, the Court finds that Defendant suffers from an extraordinary physical impairment and thus this case presents an extraordinary circumstance warranting a departure under U.S.S.G. 5H1.4.

Accordingly, the Court departs to offense level 23. Furthermore, the Court finds that Defendant's criminal history is overstated,<sup>9</sup> and the Court departs two levels on the horizontal scale to criminal history Category IV, pursuant to U.S.S.G. 4A1.3(b). Defendant will, therefore, be sentenced to a term of 70 months incarceration. During that time, he should receive treatment, medical and otherwise,<sup>10</sup> and hopefully live long enough to regain his freedom.

In the meantime, the "war on drugs" goes on. Others will undoubtedly replace Torrey Williams in the chain of drug commerce, and the Courts will continue to incarcerate them for long periods at alarming rates.<sup>11</sup>

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<sup>8</sup>Unfortunately, the notion of dispensing justice, at least from a subjective standpoint, is no longer a part of the sentencing calculus. If it were, the Court would fashion a sentence appropriate to the particular circumstances presented.

<sup>9</sup>In addition to a history of petty drug dealing, Defendant has a penchant for attempting to flee when apprehended. There is no record of violent behavior.

<sup>10</sup>The Court recommends that Defendant be placed in the drug treatment program while incarcerated, and receive drug counseling thereafter.

<sup>11</sup>In 2002, 26,000 people were sentenced for drug-related offenses in federal court – a 25% increase since 1998. Drug trafficking defendants received an average sentence of 71 months. Approximately 40% of all criminal sentences in 2002 were drug related. 2002 Sourcebook of Federal Sentencing Statistics, United States Sentencing Commission.

**DONE** and **ORDERED** in Chambers in Orlando, Florida on this 30th day of November,  
2004.

  
GREGORY A. PRESNELL  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

United States Marshal  
United States Attorney  
United States Probation Office  
United States Pretrial Services Office  
Counsel for Defendant  
Torrey Williams